

(Rev. 11/2012)

FILED - GR

December 14, 2018 12:23 PM

CLERK OF COURT

U.S. DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BY: mhc SCANNED BY MHC 12/14/18**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT A JUDGMENT OR CONVICTION OR TERM OF CONFINEMENT OF A PERSON IN FEDERAL CUSTODY**

United States District Court	District WESTERN DISTRICT MICHIGAN
Name (under which you were convicted): CARLTON DUANE BALLARD, JR.	Docket or Case No.: Missing Page 8
Place of Confinement: F.C.I. Gilmore, Glenville, WV	Prisoner No.: 21598-040
UNITED STATES OF AMERICA	Movant (include name under which convicted)
v.	CARLTON DUANE BALLARD, JR.

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Western District of Michigan

1:18-cv-1382**Janet T. Neff
U.S. District Judge**(b) Criminal docket or case number: 1:17-cr-00019-JTN2. (a) Date of the judgment of conviction: Unknown(b) Date of sentencing: December 11, 2017

3. Identify all counts and crimes for which you were convicted and sentenced in this case: Possession with intent to distribute 5 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B)(viii); and Possession with intent to distribute heroin, 21 USC § 841(a)(1)(b)(1)(B)(i).

4. Length of sentence for each count or crime for which you were convicted in this case: 70 months total as each count, run concurrently.

5. (a) What was your plea?

Not guilty
Guilty
Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

6. If you went to trial, what kind of trial did you have? (Check one) N/A

- (a) Jury
- (b) Judge only

7. Did you testify at the trial? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Date you filed: _____

(b) Name of court: _____

(c) Docket or case number: _____

(d) Result: _____

(e) Date of result: _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No N/A

If "Yes," answer the following:

(1) Date you filed: _____

(2) Docket or case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court? No

11. If your answer to Question 10 was "Yes," give the following information: Yes No

(a) (1) Date you filed: _____

(2) Name of court: _____

(3) Docket or case number (if you know): _____

(4) Date of filing (if you know): _____

(5) Nature of the proceeding: _____

(6) Grounds raised: _____

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(8) Result: _____

(9) Date of result: _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Date you filed: _____

(2) Name of court: _____

(3) Docket or case number (if you know): _____

(4) Date of filing (if you know): _____

(5) Nature of the proceeding: _____

(6) Grounds raised: _____

(7) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes No

(8) Result: _____

(9) Date of result : _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Ineffective assistance of counsel, failure to recognize and object to Government's lack of constitutional authority to prosecute under a void law.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

There is no reference to drugs of any kind within the enumeration of powers of Congress to enact the laws under which petitioner was prosecuted under.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Waived direct appeal

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

GROUND TWO: Ineffective assistance of counsel, failure to recognize and object to the enforcement of federal criminal laws within the sovereign territorial boundaries of the State of Michigan.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

The Constitution does not provide for the enforcement of federal laws within territory not owned by or ceded to the United States.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No N/A

(2) If you did not raise this issue in your direct appeal, explain why: Waived direct appeal.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

GROUND THREE: Ineffective assistance of counsel, failure to investigate and object to lack of criminal jurisdiction of Article III district courts.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.): _____

Reading the Constitution's judicial article reveals that "Cases, in Law and _____

Equity" must be applied in the conjunctive, and means civil proceedings,
and not criminal cases, which Article III, § 2, does not provide for.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No N/A
(2) If you did not raise this issue in your direct appeal, explain why: Waived direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition or application? Yes No
(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Date motion was filed: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes No
(4) Did you appeal from the denial of your motion, petition or application? Yes No
(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed : _____

Docket or case number: _____

(3) Did you receive a hearing on your motion? Yes No

(4) Did you appeal from the denial of your motion, petition or application? Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal? Yes No

If yes, answer the following:

Date you filed: _____

Name of court where the appeal was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, state which ground or grounds have not been presented and your reasons for not presenting them:

All relevant constitutional and jurisdictional grounds are being raised in this instant collateral attack motion.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Helen Nieuwenhuis, Federal Public Defenders' office

(b) At arraignment and plea: Same

(c) At trial: N/A

(d) At sentencing: Same

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?
Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: Kalamazoo

County Circuit Court Case No. 2013-1822-FH

I was Paroled Feb. 14, 2018 No sentence to serve

(b) Give the date the other sentence was imposed: 2013

(c) Give the length of the other sentence: Unsure

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence

TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the

one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of-

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant him or her the relief to which he or she may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Motion Under § 2255 was placed in the prison mailing system on 12-9-18 (month, date, year).

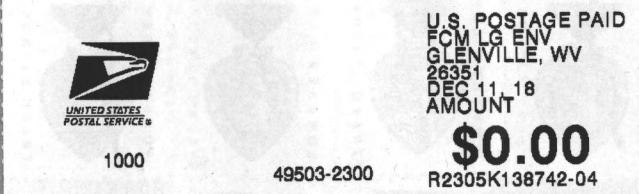
Signature of Movant

Date

Signature of Attorney (if any)

If the person signing is not movant or an attorney, state relationship to movant and explain why movant is not signing this petition.

CARLTON DUANE BALLARD, JR. #21598-040
Federal Correctional Institution
FCI Gilmer
PO Box 6000
Glenville, WV 26351-6000



** L E G A L

M A I L **

↔21598-040↔
United Statesdistrictcourt
110 Michigan ST NW
Grand Rapids, MI 49503
United States



FCI Gilmer, P.O. Box 5000, Glenville, WV 26351

Date

12-10

"The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has been neither opened nor inspected. If the writer raises a question over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.